



GAHC010207712023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/308/2023

SILCHAR MUNICIPAL BOARD
REPRESENTED BY ITS CHAIRPERSON, SILCHAR-788001, P.S.-SILCHAR,
DIST-CACHAR

VERSUS

GOPENDU CHOUDHURY AND 4 ORS
S/O LATE JNANENDRA CHOUDHURY, R/O GIRISH ROAD, TARAPUR,
SILCHAR-3, P.S.-SILCHAR, DIST-CACHAR, ASSAM

2:SILCHAR DEVELOPMENT AUTHORITY
REPRESENTED BY ITS CHAIRMAN
SILCHAR-788001
P.S.-SILCHAR

3:SMT. UMA BANIK
W/O LATE SHYAMAL KANTI BANIK
P/R/O STEAMERGHAT ROAD
SILCHAR
TOWN
P.O. AND P.S.-SILCHAR
DIST- CACHAR
ASSAM

4:SMTI. RUMA BANIK
D/O LATE SHYAMAL KANTI BANIK
P/R/O STEAMERGHAT ROAD
SILCHAR
TOWN
P.O. AND P.S.-SILCHAR



DIST- CACHAR
ASSAM

5:SMTI. RUMELA BANIK
D/O LATE SHYAMAL KANTI BANIK
P/R/O STEAMERGHAT ROAD
SILCHAR
TOWN
P.O. AND P.S.-SILCHAR
DIST- CACHAR
ASSA

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : MR G J SAIKIA (FOR CAVEATOR)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : 22.09.2023

Date of judgment : 22.09.2023

JUDGMENT & ORDER

Heard Shri S. Dutta, learned Senior Counsel assisted by Shri K. Upamanyu, learned counsel for the petitioner. Also heard Shri M. Biswas, learned counsel for the respondent no. 1, which is the contesting respondent and has also filed caveat in this case.

2. Considering the subject matter in question and also the fact that the learned counsel for the respondent no. 1, which is the contesting respondent and the plaintiff in the suit below is present, this matter is taken up for disposal at the motion stage itself.



3. The petitioner is the defendant in a suit filed for declaration of right, title, interest and recovery of possession which was registered as TS No. 33/2010 before the learned Civil Judge No.1, Cachar, Silchar in which the petitioner had filed the written statement.
4. It is the specific case of the petitioner that though certain documents were mentioned in the written statement, those were not filed in accordance with law along with the said written statement and accordingly, two applications were filed by the petitioner – defendant before the learned Court. By the first application numbered as Petition No. 237/01, a prayer was made to take judicial notice of the said documents. The petitioner had filed another application to call for the original documents including the relevant book from the office of the Senior Sub-Registrar, Silchar and that petition was numbered as Petition No. 246/13.
5. Vide the impugned order dated 07.06.2023, both the petitions have been rejected and it is the legality and validity of the said order which has been put to challenge in this petition filed under Article 227 of the Constitution of India.
6. Shri Dutta, learned Senior Counsel for the petitioner has submitted that the impugned order suffers from material irregularity and illegality as the learned Court has failed to exercise powers vested in law. By referring to Section 30 of the Code of Civil Procedure, 1908, it is submitted that under the aforesaid provision, adequate powers are vested on the Court to order discovery, inspection, production etc. and the said power has been ignored while passing the impugned order. The learned Senior Counsel further submits that though the second petition may not be structured in the format of a petition under Order

VIII Rule 1(A) of the CPC, the spirit should be followed and leave should have been granted by taking into consideration the nature of the documents involved in the petition. He submits that the documents are necessary for a fair and complete adjudication of the *lis* between the parties.

7. By drawing the attention of this Court to the written statement, the learned Senior Counsel by referring to paragraph 14 has submitted that adequate pleadings in respect of the said documents were made and therefore these documents are not new and therefore the learned Court should have allowed the petition in the interest of justice. He submits that it is the truth which is required to be arrived at in a judicial process.

8. It is the submission of the learned Senior Counsel that the ultimate endeavor of a Court in *seisin* of a dispute is to reach the truth and for such purpose, the views of the Court should not be stringent and at times, in the interest of justice, lenient view are required to be adopted so far as the procedures are concerned as the procedure are handmaid of justice. He further submits that it is the substantial justice which is the objective of the judicial system. The learned Senior Counsel accordingly prays for interference by this Court and to set-aside the impugned order dated 07.06.2023 and to allow the prayers made in the two petitions.

9. In support of his submissions, Shri Dutta, learned Senior Counsel has placed reliance upon the following case laws-

i. Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira (dead) through Lrs. [(2012) 5 SCC 370]

ii. Manowar Husain Vs. Sri Manoranjan Das [2016 4 GauLR]



preliminary objection with regard to the maintainability of the present petition. By referring to the affidavit accompanying the petition, he submits that the affidavit has been executed by a person, not authorized in law who has also described himself to be the petitioner and therefore, in that view, the petition itself not maintainable.

14. Coming to the merits of the case and opposing the contentions raised on behalf of the petitioner, Shri Biswas, learned counsel has submitted that the records would substantiate that the evidence of the defendant was closed on 22.09.2022. He has also submitted that a petition was filed by the present petitioner as defendant to adduce additional evidence which was rejected on 12.12.2022. He further submits that neither the order dated 22.09.2022 by which the evidence was closed nor the order dated 12.12.2022 by which the prayer for adducing additional evidence by the defendant was rejected were put to further challenge and therefore the said orders had attained finality. He submits that it was only on 18.01.2023 when the present petitions were filed.

15. Shri Biswas, learned counsel for the contesting respondent no. 1 has also pointed out that while the impugned order dated 07.06.2023 concerns two petitions being Petition No. 237/01 and Petition No. 246/13, the prayer in the present petition is with respect to only one petition, namely, Petition No. 246/2013. He accordingly submits that the petitioner not being aggrieved with the rejection of Petition No. 237/01 which was in the context of taking judicial notice, the present challenge would perhaps not even be maintainable. He makes a categorical submission that since the Petition No. 237/01 pertaining to taking of judicial notice has been rejected by discussing the ingredients to



Section 57, there is no requirement to cite any reason rejecting the other petition as the adjudication of the said petition was rendered mere academic in nature.

16. Shri Biswas, the learned counsel hastily adds that as many as 8 dates were fixed for defendant evidence and on those dates no endeavor was made to adduce further evidence and presently when the matter was posted for arguments only then the present petitions were filed. He submits that there is an oblique intention in filing of the present petition which is meant only to dispense with the requirement of proving the documents involved. He submits that the documents being private in nature, a petition for taking judicial notice is not maintainable as that would amount to substituting the rigors in an adversarial litigation to prove their own documents.

17. Shri Biswas, learned counsel for the respondent has also placed before this Court copies of the relevant order sheets which are made part of the records.

18. Shri Biswas, learned counsel in support of his submission has referred to the case of **Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate** reported in **(2009) 4 SCC 410** wherein the Hon'ble Supreme Court has laid down that even the powers of re-examination is to be exercised in a circumscribed manner and should not be allowed to fill up any lacuna. The learned counsel accordingly submits that the present is not a fit case for any interference and should be dismissed.

19. The rival submissions made on behalf of the parties have been duly considered and the materials placed before this Court have been carefully

examined.

20. The thrust of the petitioner in making the present challenge in respect of the order dated 07.06.2023 is that specific averments were made in the written statement regarding the two documents and in this regard the paragraph 14 of the written statement was pressed into service.

21. At the outset, it is to be noted that though the arguments have been made as if leave of the learned Court was sought for to produce additional documents, neither of the two petitions filed were for seeking such leave. While the first petition was for taking judicial notice of two private documents, the second petition was for calling the original records from the Office of the Sub-Registrar. However, even assuming that the petition was for leave to produce additional documents, let the same be tested.

22. Order VIII Rule 1 of the Code of Civil Procedure is with regard to filing of written statement where a period has been prescribed. Under Rule 1(A) is with regard to production of documents by the defendant on which relief is claimed. For ready reference, the aforesaid provision of law is extracted hereinbelow-

“1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.



(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents—

*(a) produced for the cross-examination of the plaintiff's witnesses,
or*

(b) handed over to a witness merely to refresh his memory.”

23. The other relevant Rules in Order VIII, namely, Rules 3, 4 and 5 make it clear that denial is to be specific and even evasive denial is not acceptable. Therefore, the submission made that adequate pleadings were made in the written statement would not do away with the requirement of filing the said documents along with written statement and the only provision which gives a window to a defendant is Rule 1A(3). The requirement of the aforesaid provision is that leave of the Court is required to be taken for producing such document to be received in evidence.

24. Even without going into the merits and contents of the documents, what intrigues this Court is that as many as 8 dates were fixed for defendant evidence and on 22.09.2022 the evidence of the defendant was closed. At no point of time before the said date, any application was filed for seeking leave to produce additional documents. This Court is of the view that the contention now



raised that the documents were mentioned in the written statement was available from the date of filing of the written statement and yet no such prayer was made on those dates. The aforesaid observation of this Court is by taking a lenient view that though the present two applications more particularly Petition No. 246/2013 is not even a Petition under Order VIII Rule 1A(3) CPC, assuming the same to be a petition to seek leave, the said petition was not filed within the extended time. What further confronts this Court is the fact that both the orders dated 22.09.2022 by which the evidence of the defendant was closed and the order dated 12.12.2022 whereby the applications for adducing additional evidence by the defendant was rejected were put to challenge and therefore both those orders had attained finality. On such a situation whether the present two petitions in which the order dated 07.06.2023 was passed was maintainable is itself a question.

25. With regard to the submission that no reasons have been assigned, this Court is of the view that while rejecting the Petition No. 237/01, the relevant provisions of law namely, Section 57 of the Indian Evidence Act has not only been discussed but reasons have also been assigned for rejection of the petition. This Court also finds force in the argument of Shri Biswas, learned counsel for the respondent no. 1 that since the Petition No. 237/01 was rejected which was with a prayer for taking juridical notice of the documents, the second petition had become mere academic in nature and therefore the impugned order dated 07.06.2023 does not appear to be one which has been passed without any jurisdiction.

26. This Court in exercise of its supervisory jurisdiction under Article 227 of

the Constitution of India would mainly be confined with errors of jurisdiction and would exercise its powers only in circumscribed manner when there is material irregularity or gross illegality and those conditions do not appear to be there in the present impugned order.

27. With regard to the case of ***Maria Margarida Sequeira Fernandes*** (supra) cited by Shri Dutta, learned Senior Counsel, there is absolutely no dispute to the aforesaid proposition of law. However, the present dispute is based on the provisions of the Code and as discussed above, in spite of scope being provided in the Code itself, the petitioner as defendant had failed to act diligently. It may also be noted that the aforesaid case of ***Maria*** (supra) was a suit under Section 6 of the Specific Relief Act which is summary in nature.

28. This High Court in the case of ***Manowar Husain*** (supra) had relied upon the aforesaid case of ***Maria Margarida Sequeira Fernandes*** (supra). However, in the said case, an application under Order VIII Rule 1A(3) of the CPC was indeed filed in time unlike the facts of the present case where the application was for taking judicial notice of two Deeds, which were private in nature. Similarly, in the case of ***Sugandhi*** (supra), the application was under Order VIII Rule 1A(3) of the CPC and it has been laid down that grant of leave is a discretionary power of the Court to be exercised judiciously.

29. As regards the aforesaid case laws cited on behalf of the petitioner, this Court is in humble agreement with the principles laid down however, the same are to be understood with the facts and circumstances of each case and in the present case, exercise of the supervisory jurisdiction under Article 227 of the Constitution of India may not be justified. Regarding application of a ratio of a



judgment, the Hon'ble Supreme Court has elaborately explained the same in the case of ***Padma Sundara Rao Vs. State of T.N.***, reported in **(2002) 3 SCC 533** in the following manner:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [1972 AC 877 (HL)]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

30. In that view of the matter, the instant petition is dismissed.
31. No order as to cost.

JUDGE

Comparing Assistant